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MICHAEL RODAK, JR., CLE

IN THE

Supreme Court of the United States

OCTOBER TERM 1974

No. 74-99

FRANK AMATO, Petitioner,

v.

UNITED STATES OF AMERICA.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

REPLY MEMORANDUM

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REPLY MEMORANDUM

The nature of the Memorandum in Opposition calls for a short reply.

There is *no evidence* in this case that the closing of the cocktail lounge for a month affected commerce in the slightest degree since the local suppliers did not testity that they stopped selling to the lounge or that their own purchases from their suppliers outside of Florida were in any way affected. The case was submitted to the jury by the trial court that if "supplies were brought in from out of the state . . . then the result is direct and substantial interference with or effect upon interstate commerce."

The evidence in the case must, of course, be adjudged in

terms of the charge of the district court in submitting the issues to the jury. *Grunewald v. U.S.*, 353 U.S. 391, 406.

The owners were not "driven out of business", as the government asserts, but, indeed, sold the cocktail lounge at an extraordinary large profit.

Furthermore, every enterprise, however localized, inevitably has some effect however remote on the flow of commerce. Hence the *de minimis* factor must intervene, otherwise the reach is boundless.

Respectfully submitted,

JACOB KOSSMAN
Counsel for Petitioner